



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 177

Docket No. USCG-2013-0216

RIN 1625- AC01

Regulated Navigation Areas; Bars along the Coasts of Oregon and Washington

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

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SUMMARY: The Coast Guard finalizes regulations previously published as an interim rule on July 9, 2013. In this final rule, the Coast Guard removes the wave height and surface current provisions and regulated boating areas for bar crossing locations along the coasts of Oregon and Washington because they conflict with more recently promulgated wave height provisions and regulated boating areas for the same bar crossings. This amendment is necessary in order to remove confusion as to which safety requirements apply to recreational vessels, uninspected passenger vessels, small passenger vessels, and commercial fishing vessels when operating within the regulated navigation areas.

DATES: This final rule is effective [INSERT DATE 30 DAYS

AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2013-0216 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2013-0216 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, e-mail or call Mr. Burt Lahn, U.S. Coast Guard Office of Navigation Standards (CG-NAV-3), e-mail [Burt.A.Lahn@uscg.mil](mailto:Burt.A.Lahn@uscg.mil), telephone 202-372-1526. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

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## I. Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
NTSB	National Transportation Safety Board
RNA	Regulated Navigation Area
U.S.C.	United States Code

## II. Regulatory History and Information

The bars along the coasts of Oregon and Washington are a maritime operating environment unique to the Pacific Northwest. Bars are commonly defined as areas of shallow water that lead into rivers and bays. At times, bars become extremely hazardous for vessels to navigate due to strong currents and large waves that can form when strong ocean currents pass over the bars. Until 2009, the bars along the coast of Oregon and Washington were regulated in 33 CFR Part 177. On February 12, 2009, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register

(74 FR 7022) that proposed to establish Regulated Navigation Areas (RNAs) in 33 CFR 165.1325 for bars along the coasts of Oregon and Washington. RNAs are areas of water within a defined boundary that, for reasons of safety or environmental concerns, the Coast Guard has implemented regulations on the operation of vessels permitted inside the defined area. The proposals in the NPRM were designed to help ensure the safety of persons and vessels operating on or in the vicinity of the bars. The Coast Guard subsequently published a final rule in the Federal Register on November 17, 2009 (74 FR 59098), adopting most of the NPRM's proposals.

Certain provisions in that 2009 final rule superseded other provisions in Part 177 that governed bar crossing along the coasts of Oregon and Washington. Specifically, 33 CFR 165.1325(a) sets forth the specific locations for the RNAs that cover the bars along the Oregon and Washington coasts, and supersedes the regulated boating areas in 33 CFR 177.08. Additionally, 33 CFR 165.1325(b)(13) defines the term unsafe condition to include certain wave height conditions, and supersedes the unsafe wave height formula and surface current provisions in 33 CFR 177.07(f). The purpose of this final rule is to remove those superseded provisions from the CFR.

As discussed in the 2009 NPRM, the Coast Guard determined that the wave height and surface current provisions in 33 CFR 177.07(f), and the regulated boating areas in 33 CFR 177.08, did not provide a sufficient measure of safety for persons and vessels operating in those areas. In addition, multiple Coast Guard and National Transportation Safety Board (NTSB) accident investigations indicated a need for additional regulations to mitigate the risks associated with the bars and to enhance the safety of the persons and vessels operating on and in the bars' vicinity.

Because the 2009 amendments to 33 CFR 1625.1325(a) and 1625.1325(b)(13) superseded the provisions in 33 CFR 177.07(f) and 177.08 specific to the wave height and surface current provisions and regulated boating areas for bar crossing locations along the coasts of Oregon and Washington, the Coast Guard, on July 9, 2013, issued an Interim Rule with request for comments (78 FR 40963) for the purpose of removing the superseded provisions in 33 CFR 177.07(f) and 177.08. In that Interim Rule, we explained that it was necessary to remove the wave height and surface current provisions contained in 33 CFR 177.07(f) and 177.08 specific to bar crossings along the coasts of Oregon and Washington because they conflict with the more recently

promulgated regulations in 33 CFR 1625.1325. This rule finalizes the 2013 interim rule with no changes.

### III. Basis and Purpose

Under 46 U.S.C. 4302, the Coast Guard is authorized to establish regulations to promulgate minimum safety standards and procedures for recreational vessels. Under 46 U.S.C. 4105(a), uninspected passenger vessels are also subject to Chapter 43 of Title 46, U.S. Code.

This rulemaking is necessary in order to remove the wave height and surface current provisions under 33 CFR 177.07(f) and the geographic coordinates in 33 CFR 177.08 that have been superseded by 33 CFR 165.1325, to eliminate confusion regarding which provisions apply specifically to the bars along the coasts of Oregon and Washington. The regulations in 33 CFR 165.1325 establish clear procedures for restricting and/or closing the bars as well as mandating additional safety requirements for recreational and uninspected commercial vessels operating on or in the vicinity of the bars, when certain conditions exist. The RNAs established in 33 CFR 165.1325 help to expedite bar restrictions and closures and include a mariner notification process that helps keep vessels away from hazardous bars. The RNAs also require the use and/or making ready of safety equipment, as well as additional reporting requirements when

certain conditions exist, which help safeguard the persons and vessels that operate on or in the vicinity of hazardous bars.

#### IV. Discussion of the Final Rule

Certain provisions of 33 CFR part 177, governing maritime traffic operating on and in the vicinity of the bars along the coasts of Oregon and Washington, provide insufficient safety measures for the persons and vessels that operate in those areas. As discussed in the February 12, 2009 NPRM (74 FR 7022), multiple Coast Guard and NTSB casualty investigations indicated a need for additional regulations to mitigate the risks associated with the bars and to enhance the safety of the persons and vessels operating on and in the bars' vicinity. To fulfill this need, in 2009, the Coast Guard established the RNAs in 33 CFR 165.1325.

The provisions in 33 CFR 165.1325 establish an increased measure of safety and supersede the existing provisions in 33 CFR 177.07(f) and 177.08. Accordingly, the Coast Guard, through this rule, removes the wave height provisions in 33 CFR 177.07(f)(1) and (2), the surface current provision in 33 CFR 177.07(f)(3), and the regulated boating areas in 33 CFR 177.08.

#### V. Discussion of the Comments on the Interim Rule

The Coast Guard received one comment on the interim rule. The commenter stated that the interim rule does not explain what specific changes are being made or how they are more protective than the existing regulations, and requested a table showing the difference between the existing regulations and the new language. Such a table, the commenter suggests, would make this rulemaking action more useful and would also increase the transparency of the Coast Guard's actions.

The Coast Guard reviewed the published interim rule. We do not agree that the interim rule fails to explain the specific changes effectuated by the rule. In the interim rule, the Coast Guard explained that the wave height and surface current restrictions in 33 CFR 177.07(f) and the geographic coordinates in 33 CFR 177.08 were in conflict with, and had been superseded by, the more recently promulgated regulations in 33 CFR 165.1325 (promulgated in a final rule in 2009, 74 FR 59098, after notice and comment on the proposed rule, 74 FR 7022). The Coast Guard further explained that the rulemaking is necessary in order to remove the provisions in 33 CFR 177.07(f) and 177.08 that conflict with 33 CFR 165.1325, and thereby remove confusion regarding which provisions apply specifically to the bars along the coasts of Oregon and Washington. Further, it is



worth emphasizing that this rulemaking is not adding new regulatory provisions. For these reasons, we do not believe adding a table is necessary in order to understand the effect of this rule, nor would it add clarity to the public on the removal of the provisions in 33 CFR 177.07(f) and 177.08 that conflict with 33 CFR 165.1325.

## VI. Regulatory Analyses

We developed this final rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

### A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866,

"Regulatory Planning and Review", and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard does not expect any economic impact as a result of this rule because it involves removing two criteria for unsafe conditions in 33 CFR part 177 that have been superseded by 33 CFR 165.1325.

#### B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rulemaking, which finalizes a lawfully promulgated interim rule, does not require a general notice of proposed rulemaking and, therefore, is exempt from the analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 604).

#### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we

want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Burt Lahn, U.S. Coast Guard Office of Navigation Standards (CG-NAV-3), e-mail Burt.A.Lahn@uscg.mil, telephone 202-372-1526. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental

federalism principles and preemption requirements described in Executive Order 13132. Our analysis is explained below.

Under 46 U.S.C. 4306, Federal regulations promulgated under the authority of 46 U.S.C. 4302 preempt State law unless the State law is identical to a Federal regulation or a State is specifically provided an exemption to those regulations, or permitted to regulate marine safety articles carried or used to address a hazardous condition or circumstance unique to that State. As noted above, this rule simply removes superseded regulations regarding wave height and surface current provisions, and certain regulated boating areas from 33 CFR part 177.

Additionally, there are no existing State laws that are identical to these Federal regulations, nor have the States been provided an exemption to those regulations or permitted to regulate marine safety articles. Therefore, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

#### F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate,

or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. This rule will not result in such expenditure.

#### G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights."

#### H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform", to minimize litigation, eliminate ambiguity, and reduce burden.

#### I. Protection of Children

We have analyzed this rule under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks." This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments", because it does not have a substantial direct effect on one or more Indian tribes, on

the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### K. Energy Effects

We have analyzed this rule under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials,

performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under section 2.B.2, Figure 2-1, paragraph 34(g), of the Instruction because it involves regulations establishing, disestablishing, or changing RNAs. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 177

Marine safety.

Title 33—Navigation and Navigable Waters

PART 177—CORRECTION OF ESPECIALLY HAZARDOUS CONDITIONS

For the reasons discussed in the preamble, under authority of 46 U.S.C. 4302, 4311; Pub. L. 103-206, 107 Stat. 2439, the interim rule amending 33 CFR part 177 that was published at 78 FR 40963 on July 9, 2013, is adopted as a final rule without change.

Dated: March 27, 2014

GARY C. RASICOT  
Director of Marine Transportation Systems  
U.S. Coast Guard

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